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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,337	03/18/2004	Michel Valentini	251-IUS	3748
5568	7590	07/11/2006	EXAMINER	
JACK PAAVILA BOX 1151 ALEXANDRIA, KOC IA0 CANADA			DEVOTI, PAUL D	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/802,337	Applicant(s) VALENTINI, MICHEL	
	Examiner Paul Devoti	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6,12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The indicated allowability of claims 1, 4, 6, 12, and 14 is withdrawn in view of the newly discovered reference(s) to Brochu (US 2004/0187394). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brochu (US 2004/0187394) in view of Herren (US 5566513).

4. Regarding claims 1 and 12, Brochu discloses a gutter cover with a main elongated section (72), an outer side section (90), and an inner side section (82) on the other side of the main section (72). The main section (72) has perforations (74). The inner side section comprises a slot (84) that opens away from the main section, with a flexible flap (86) that is mounted in the slot (84) and extends away from the main section (72). Brochu does not disclose the outer side section defines a channel that opens away from the main section, with the channel defined by a top wall, bottom wall, and end wall joining the top and bottom walls. Additionally, Brochu does not disclose the bottom

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wall of the channel is shorter than the top wall, and that the cover has an upwardly extending wall that forms a gripping surface.

5. Herren, however, discloses a gutter guard apparatus with an outer side section opening away from a main section, having a channel defined by a top wall (23), bottom wall (26), and end wall (25). The bottom wall (26) that is shorter than its top wall (23). The bottom wall (26) has a retaining means (27) on its top surface near its outer free end. The gutter guard apparatus also comprises an upwardly extending wall (22, and also part of end wall 25) that forms a gripping surface. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Brochu's gutter cover to include an outwardly opening channel and gripping surface as taught by Herren, to provide a secure attachment for a gutter cover to an outer lip of a gutter.

6. Regarding claim 14, Brochu in view of Herren discloses everything previously mentioned, but does not disclose the gutter cover is made from painted aluminum and coated with polyester. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the gutter cover from painted aluminum and coated with polyester, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

7. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brochu (US 2004/0187394) in view of Herren (US 5566513) as applied to claim 1 above, and further in view of Meckstroth (US 6412228).

8. Regarding claim 4, Brochu in view of Herren discloses everything previously mentioned, including the surface of the end wall forms the gripping surface, but does not disclose the bottom wall of the channel is aligned with the panel. Meckstroth, however, discloses a gutter cover with a main section (45, 68, 71) that is aligned with bottom wall (16) of an outwardly facing channel. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Brochu's gutter cover, already modified by Herren, so that the bottom wall of the channel is aligned with the panel, as taught by Meckstroth to provide a better fit of the channel onto a gutter lip.

9. Regarding claim 6, Brochu in view of Herren and Meckstroth discloses everything previously mentioned, including the retaining means (27) on the bottom wall (26) of the channel.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD *FD*
07/07/06

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

